

SUBMISSION

on

4 YEAR TERMS

*Submission No 4
Spec 28.1*

for the

**LEGAL, CONSTITUTIONAL AND
ADMINISTRATIVE REVIEW COMMITTEE**

of

LEGISLATIVE ASSEMBLY OF QUEENSLAND

20th.April 2000

by

Graham L. Paterson

The Chairman,

The Legal, Constitutional and Administrative Review Committee.

I thank you for the invitation to make a submission to your Committee in respect to the proposal to introduce a 4 year term of office into the Queensland Parliamentary system.

The background paper attached to your letter is helpful to a certain degree but ignores a number of fundamental questions.

To begin with why was this issue raised by the Queensland Constitutional Review Commission in the first place?

It was not part of the original draft of the proposed consolidated Constitution nor was it raised as a question in the Issues Paper.

I felt rather strongly about the way this proposition was introduced in the revised draft and expressed these views to the Commission in the update of the Technical Paper I had submitted to them previously.

I am attaching a copy of those comments as an Appendix to this current submission to your Committee.

In one sense I was pleased to see that LCARC had adopted the same approach as I have in recognising that any change to the Parliamentary term is a completely separate issue to the consolidation of the Queensland Constitution.

On the other hand I was disappointed that your Committee saw fit to single out this specific recommendation and treat it, virtually, as a major issue when it really has nothing to do with the consolidation process.

I get the feeling that there are very definite vested interests driving this issue despite the fact that the people of Queensland rejected the

proposal in 1991 and the people of Australia did the same with the Commonwealth Parliament in 1988.

The Commonwealth proposal was defeated by a resounding 2 to 1 national majority and was not accepted in any State of Australia.

With this sort of background who is now promoting a 4 year term as it certainly doesn't appear to be coming from the people?

Be that as it may, it appears, quite clearly to me anyway, that there is a huge amount of work still to be done in respect to the consolidation of the Queensland Constitution.

This is indicated in my accompanying submission to you on the Constitution itself.

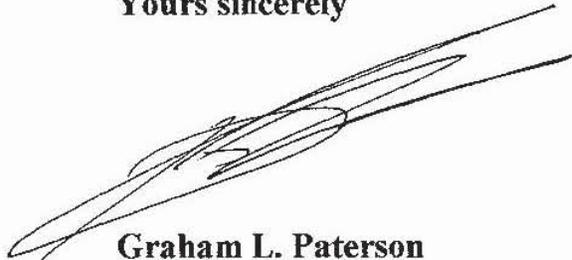
I would have hoped that that work would have been the primary concern of your Committee rather than pursuing a single issue that is, largely, of obvious benefit mainly to the politicians.

Certainly, to my knowledge, the people of Queensland have not indicated any desire to have this question raised again.

I think it is quite improper that the consolidation of the Queensland Constitution is being used as a political tool to resurrect the idea.

Having said this I will now address my thoughts on the issue itself and I thank you for the opportunity to do so.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Graham L. Paterson', written over a series of horizontal lines.

Graham L. Paterson

INTRODUCTION

There were a number of factors raised in your Background Paper that appear to be accepted as given facts and not open to discussion.

I for one, do not subscribe to the proposition that any political process is immutable and must be accepted without argument.

One such "convention" I refer to is the concept that the political party in "power" at any given time should automatically be afforded the right to manipulate the public by choosing to go to an election at a time favourable to itself.

I see this as a reprehensible action as far as any democratic principles are concerned.

As you pointed out in your paper the Government can make its decision based on information that it can deliberately withhold from the public and, quite often, from other politicians.

I do not see any moral distinction between such actions and many other forms of corruption - the aim is to seek an unfair advantage but, in this case, it is at the expense of the public as a whole.

The fact that this is an accepted practice by all major political parties tends to say something about their respect for the voters.

The other "furphy" that is repeatedly trotted forth is the bogey of a so-called "minority" Government having to rely on the support of Independents to stay in power.

In actual fact this sort of Government represents the closest example of how a proper "Parliament of the people" is supposed to work.

The people elect every one of their Representatives to sit in Parliament with the intention that they should be productive, effective and helpful in trying to achieve a better life for the people who put them there.

What happens in reality is that the Party system destroys this process by effectively disenfranchising half the elected members.

The great benefit of a "hung Parliament" is that all the elected Representatives get an opportunity to constructively participate in every debate without being "steamrolled" along Party lines.

Far too often Party politics degenerates into an ego trip coupled to a straight out "power" play as is demonstrated, and supported, by the ridiculous adversarial approach taken on the floor of Parliament.

"Hung" Parliaments, especially in Queensland since the abolition of the upper House, have provided the only opportunity for Parliament to operate in the manner it is supposed to.

Queensland suffers a significant disadvantage by having a single House of Parliament and no proper, or realistic, system of checks and balances that is crucial to a Democracy under the Westminster model.

The manner in which the upper House was destroyed has got to be one of the most shameful political actions of any Parliament in Australia.

The continued unrepentant acceptance of that action by modern day politicians is, to my mind, a far more important issue than promoting a 4 year term.

THE CASE FOR

One of the arguments put forward to support a 4 year term mentioned "long term planning".

To claim that extending one's thoughts from a one year time frame to a two year time frame represents "long term planning" is clearly questionable.

A four year term has absolutely nothing to do with "long term planning".

It is an unfortunate, but undisputable fact, that the prime attribute for the preselection of any political party candidate is loyalty and faithfulness to the Party.

Foresight and long term planning credentials simply don't rate a mention alongside a candidate's loyalty, personality, ability to talk and their marketing potential.

In the whole of Australia's federated history you can count the number of successful long term planning achievements on one hand.

King O'Mally's promotion of the Commonwealth Bank stands out, along with Dennison Miller's Chairmanship and the Bank's financing of the East West railway.

The only other major long term National planning achievement that comes to mind is the Snowy Mountains Scheme.

As for Queensland, we haven't even been able to come up with a faintly worthwhile plan to harness the huge amount of fresh water that is wasted each year during our northern Monsoon seasons.

The simple fact is that there are no votes in long term planning and it is totally inappropriate to use this as any sort of justification for a 4 year term.

The second argument regarding the "encouragement of genuine leadership" hardly bears serious consideration.

The only person who will ever gain political leadership is the person, perceived by the party, best able to garner, as close as possible to 50%

public support. There are other attributes but these are in the areas of "political savvy" and are, invariably, not for public consumption.

So to relate 4 year terms to the encouragement of some sort of new, fresh, different or more effective "genuine" leadership simply cannot be supported in reality.

As for the third argument that a 4 year term will provide more time for the implementation of policies, this is true but it is also the very thing that frightens half the population of Queensland.

As for the argument about assessing the success of these policies, it simply represents proof of the shallowness and short term approach of the policies if their effectiveness, or otherwise, can be assessed in such a meagre time frame.

The fourth argument regarding the benefits to the business sector is perhaps marginally true in some cases.

Any worthwhile business already has its long term plans in place and has worked out a strategy for achieving its goals taking into account the variables of Government interference.

The difference between a 3 and a 4 year term of Parliament really has little impact on how a business is run except in the case of those smaller marginal, undercapitalised or unscrupulous enterprises which Governments tend to drive to the wall in favour of the bigger companies.

The recent extension of 4 year terms of local Government may well have been supported by similar arguments to the above but the experiment has not yet been proven and nor was it ever motivated, or initiated, by the people of Queensland.

If any Government wants to claim this action as a successful innovation inspired by popular consent they should have the courage to put it to the vote of the people at a referendum.

This did not happen and it was never intended to happen so to use an untried, and, basically, unsupported action as further justification for a 4 year term shows a degree of desperation akin to clutching at straws.

Lastly, the argument that Queensland is the only State with a 3 year term is no argument at all.

Just because all the "lemmings" jump over a cliff is no excuse why we should do the same.

In relation to this argument I noticed that there was an absence of any information regarding the process by which the other States, and Territory, gained their 4 year terms.

How many were acquired through the Referendum process and how many were implemented by legislation?

Until we are supplied with all the facts and not just selected ones, it is difficult to decide the true relevance of this proposition.

Obviously, any change to a 4 year term that was achieved through amended legislation was done in the interest and benefit of the politicians rather than that of the people.

THE CASE AGAINST

The primary argument against a longer term for our politicians, as set out in your Background Paper, seems almost impossible to refute.

Unfortunately the people of Queensland, and the people of Australia as a whole, have a long and unfortunate experience with false promises, the

deceits, the rorting, the dishonesty and the self aggrandisement that is part and parcel of Party politics.

Is it any wonder that the people are sceptical of the motives of politicians.

What action has any political party ever taken in the field of either State or National politics to prove they can be trusted?

The only one I can think of was the creation of the Commonwealth Bank in 1911 which was subsequently crippled by the Bruce - Page Government in 1924.

One has only to look at the grossly extravagant Superannuation schemes granted by the politicians to themselves in totally disproportionate terms compared to the conditions they place on their fellow countrymen.

Parliamentary benefit schemes and the ongoing inability of the politicians to submit to, what in any ordinary business, is a simple, straightforward and effective system of accountability, is seen by the public as an insult to their intelligence.

These are just some of the concerns people have about the, generally, undisciplined, and uncontrolled, licentiousness that political parties seem to assume as their birthright whenever they are elected to "power".

Until such time as a political party sees fit to promote the reintroduction of a second House in the Parliamentary system, the people will continue to be suspicious of those elected to represent them.

No party is prepared to endorse the proposition of an upper House for the very sound reason that it is not in their interests to do so.

What must be established is a series of visible, effective, accountable and independent checks on the political processes associated with Legislation.

Until this is done, any increase in the Parliamentary term will result only in a benefit to the politicians with its corresponding detriment to the people of Queensland.

The argument put forward in your Background Paper regarding "minority" Governments appears to be misleading in its assertion that the "swinging" members of such a Government would oppose "*all other Legislation*" other than no confidence motions and supply.

This is clearly ludicrous - what would be point of these people forming the Government if they did not have any intention of allowing other Legislation to pass.

The proof is in the pudding so to speak.

Arguably, one of the most successful Governments we have had in Queensland, from the people's point of view, was during the 3 years when Liz Cunningham held the balance of "power". For the first time in decades all the members of parliament had the opportunity to contribute, in a meaningful way, to achieve the best compromise of ideas from both sides of the political spectrum.

This period was notable in the reduction of petty point scoring that seems to be the accepted substitute for intelligent debate.

So, far from being a debilitating factor in the political process, "minority" Governments can be a strong liberating force. On the same note they can provide a degree of stability which might well be more beneficial to the people of Queensland than that provided by a domineering, all powerful, single minded and intolerant, political party.

ALTERNATIVES

Fixed Terms

As argued above I can find no justification for the unwritten convention that allows the party in "power" to call elections at a time they deem most favourable to themselves.

If there is to be any change in the system of Parliamentary terms then it ought to be directed towards eliminating this form of bias and corruption.

One idea for this is to introduce fixed terms with a relatively short specified period of say 2 months either side of the end of term when an election must be held.

I believe that the determination of a date for elections, ideally, ought to be agreed in consultation with the Parliament and not just the Government of the day.

There may well be a need to specify a minimum and maximum period for the conduct of election campaigns to prevent any manipulation that might disadvantage one party over another.

I would suggest that a 4 week campaign should be a maximum allowed period with 2 weeks as a minimum.

The introduction of fixed term Parliaments would go a long way to removing the current uncertainty and instability associated with modern politics.

Most of the current exceptions would still have to apply, e.g. loss of confidence and the inability to guarantee supply but there could well be a greater role defined for the Governor in certain situations.

Guaranteed Checks and Balances

Prior to any further discussion on the extension of Parliamentary terms, efforts should be made to introduce, or develop, a properly effective process of checks and balances for the Legislative functions of Parliament.

The very fact that anyone is able to come up with 60 pages of legitimate, serious and justifiable concerns about the way the draft legislation for the primary Law of Queensland is written, is proof positive that the system is not working.

That this can happen, despite the fact that the draft has gone through a lengthy process of public scrutiny and an inquiry by a Commission of learned people, seems to indicate that proper attention has not been paid to the way the document is written.

If, on the other hand, due attention has, in fact, been afforded to the wording, to the contradictions, the ambiguities, lack of definition, poor grammar and, apparent, deliberate misrepresentations, and are intended, then any remaining respect for our Parliamentary system must evaporate.

If this is an example of the standard of draftsmanship that applies, generally, to lesser Legislation, then it is absolutely imperative that a concerted effort be made to address this appalling state of affairs with the utmost urgency.

Possibly I am completely naive in my supposition that the laws of this State need to be understood by the people.

I, personally, have never believed the myth that "ignorance of the law is no excuse". On the contrary, it is probably one of the soundest excuses one can have as very little law these days can ever be understood until a judgement is handed down.

Even then confusion and misunderstanding can often remain, especially in the case of some of the higher court decisions.

I doubt there is more than a handful of people in Queensland who can truly say they understand the current 29 Acts, and instruments, that make up the Constitution of our State.

If Legislation is written deliberately so that it is meant to be unintelligible to other than the trained legal mind, then all such legislation ought to be prefaced by a statement to that effect.

I do not believe that this ought to be a policy of the lawmakers of our society.

Laws should be made for people and therefore need to be understood by people.

Laws should not be written in riddles - there needs to be proper definitions provided as to the meaning and intent of words and every attempt should be made to avoid ambiguities, misinterpretations and dishonesty.

Until we have a system in place that addresses these issues, the people of Queensland will continue to be assailed by an ooze of, largely, incomprehensible and, oft times illogical, improperly thought through, legislation.

So much legislation is designed these days to plug an immediate hole without realising that the dam itself is about to collapse.



Graham L. Paterson

20th. April 2000



APPENDIX 1

(An extract from my Submission to the Queensland Constitutional Review Commission dated 24th. March 2000)

THE NEXT SECTION IS A HIGHLY IMPORTANT AND AN IMPROPER ADDITION TO THE CONSTITUTION.

Chapter 2 Part 2 Section 15

While the question relating to a 3 or 4 year term of Parliament is an entirely appropriate question it is totally improper to sneak it into the Constitution in this manner.

This question must be asked at a referendum as a completely separate question to the acceptance of the consolidated Constitution itself.

By placing it in the redrafted Constitution in this manner implies that acceptance of the Constitution also denotes acceptance of a 4 year term.

This is a deceitful approach that might very well backfire by having the consolidated Constitution rejected if sufficient people object to a 4 year term.

On the other hand it can be seen as a form of coercion by implying that if the voters don't vote for the new Constitution and a 4 year term they won't get the benefit of a Constitution that is half way understandable.

This is really bad politics and should have no place in the discussion of a rewritten Constitution.

It is a separate political issue and should be dealt with as such.